IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6973 OF 2004

Ajit Vasant Salvi & Anr. .. Petitioners

Versus

Mrs.Amruta Ajit Salvi .. Respondent

Mrs.Anita Agarwal for petitioners

Mr.S.W.Kulkarni for respondent.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 7th February 2006.

P.C.

. Heard Mrs.Agarwal for petitioner and Mr.Kulkarni for respondents.

2. This petition under Article 227 of the Constitution of India is directed against an order passed by the Family Court Bandra in Interim Application No.85 of 2003 in Petition No.A.903 of 2002. By the order under challenge delivered on 26th September 2005, petitioner husband has been directed by the trial court to pay maintainance under section 24 of the Hindu Marriage Act at the rate of Rs.3600/- to be divided between the petitioner and two daughters. The application which is preferred in May 2003 has been allowed by this order and maintainance is granted from the date of filing of the application under section 24 of the Hindu Marriage Act.

3. This petition was moved before this Court (Gokhale, J) on 6th September 2005 and statement of Mrs.Agarwal is recorded to the effect that there are no arrears of maintainance. However, at her request, petitioner was permitted to pay

Rs.2000/- per month instead of Rs.3600/- as directed by the trial court. This court recorded that concession is granted because of the plea of petitioner that he is a driver and has meagre income and, therefore, cannot pay the amount as directed by trial court.

4. In the absence of proper details including the reasoned order passed by the trial court, it would not be fair and just to interfere with the order of the trial court. In my view, in the light of the statement recorded by this Court on 6th September 2005, interest of justice would be served if for the time being, petitioner is permitted to pay a sum of Rs.2000/- per month. However, as is prayed in the petition this is to enable the petitioner to avail an opportunity to convince the trial court that petitioner cannot afford to pay this sum on account of his income. Mrs.Agarwal makes a statement that the petitioner would avail of an opportunity, if granted by this

Court, by filing appropriate application for modification and/or variation of the order.

5. Accordingly, following order:-

(a) Petitioner is permitted to move the trial court for modification and/or variation of the order dated 26th September 2005.

(b) If such an application is filed within a period of one week from today, trial court to dispose of the same within a period of three weeks from the date the pleadings are complete.

(c) The ad-interim order of this Court permitting petitioner to pay Rs.2000/- per month to continue for a period of four weeks from today. It is open for the trial court to continue the

same further or make any other ad-interim order, in case, the petitioner moves an application for modification of its earlier order.

(d) The trial Court after hearing both sides should pass appropriate orders on the application for modification and/or variation of the interim maintainance and needless to state that in case trial court is of the view that the said amount does not require any modification, the trial court should pass appropriate orders and then, it would be open for petitioner to abide by the same or face consequences thereof. With the liberty as above, petition dismissed.

(S.C.DHARMADHIKARI, J)